

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

- Claim 28 has been amended.
- Claims 34-37, 47-50 have been cancelled.
- Claims 28-33, 38-46 are pending in the instant application.
- Claims 41-46 have been previously withdrawn from consideration.

Double Patenting

Claims 28-33, 38-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over of U.S. Patent No. 6,673,374 **are maintained** for reasons of record in the previous office action filed on 07/22/2008.

Note, it is acknowledged that Applicant's will submit a terminal disclaimer over the related applications when all other rejections and/or objections are overcome.

Claims 28-33, 38-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over U.S. Patent No. 7,018,660; 6,383,523; 6,071,541; 6,296,880 in view of GARRISON et al (US 5,569,651) **are maintained** for reasons of record in the previous office action filed on 07/22/2008.

Note, it is acknowledged that Applicant's will submit a terminal disclaimer over the related applications when all other rejections and/or objections are overcome.

Claim Rejections - 35 USC § 102

Claims 28, 30, 32-37, 40 are rejected under 35 U.S.C. 102(b) as being anticipated by SCHMIDT (US 5,139,788) **are withdrawn** in view of Applicant's Amendment.

Claim Rejections - 35 USC § 103

Claims 28-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHMIDT (US 5,139,788) in view of NADAUD et al (US 5,605,694), GARRISON et al (US 5,569,651), FOTINOS (US 6,335,388), and MCATEE et al (US 5,811,111) **are withdrawn** in view of Applicant's Amendment.

However, upon further consideration of Applicant's Amendment, a new ground(s) of rejection is made as discussed below.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28-33, 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over OZLEN (US 5,441,740) in view of SCHMIDT (US 5,139,788), NADAUD et al (US 5,605,694), FOTINOS (US 6,335,388), and McATEE (US 5,811,111).

Applicant's claims are directed to a composition comprising of: 0.01-1.5% of hydrogen peroxide; hydrophilic moisturizing agent; hydrophobic moisturizing agent; an enzymatic exfoliant; an anti-inflammatory agent; amphoteric surfactant; citric acid. Additional limitations include: ceramide; hyaluronic acid; pharmaceutically acceptable carrier; in the form of cream.

OZLEN teaches a composition comprised of: hydrophilic moisturizing agent, such as 2% propylene glycol (see col. 3, line 59); hydrophobic moisturizing agent, such as 0.5% dimethicone (see col. 4, line 13); an enzymatic exfoliant, such as papain (see abstract; and col. 4, line 24-26); an anti-inflammatory agent, such as 1% salicylic acid (see col. 3, line 55); surfactants, such as sorbitan stearate (see col. 3, line 61); alpha-hydroxy acids, such as citric acid (see col. 1, line 55-56; col. 3, line 53). Additional limitations include: increases skin production of natural humectant, such as hyaluronic acid (see col. 4, line 51-53); pharmaceutically acceptable carrier (see col. 2, line 19); in the form of cream (see col. 3, line 4-5); wherein the enzyme allows enhanced results to be achieved, while maintaining mildness by not increasing the alpha-hydroxy acid level (see col. 4, line 53-60); skin disorders, such as dry skin and acne (see col. 1, line 14-17).

OZLEN does not teach using hydrogen peroxide; hydrophobic moisturizing agent, such as ceramide; hydrophilic moisturizing agent, such as hyaluronic acid; amphoteric surfactant.

SCHMIDT teaches an antimicrobial agent composition for the skin (see col. 2, line 7) comprised of: 0.1-3% wt. of hydrogen peroxide (see col. 4, line 17-19); a

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conditioning agent, such as glycerine and propylene glycol, which reads on moisturizing agents; an exfoliant, such as lactic acid (see col. 3, line 12) or citric acid (see col. 8, line 54). Additional disclosures include: pharmaceutical acceptable carrier, such as water (see col. 8, Table 1); wetting agents (see col. 5, line 20), which reads on surfactant; stabilizer (see col. 4, line 66).

NADAUD teaches a composition for skin treatment (see abstract) comprised of: hydrophilic moisturizing agent, such as hyaluronic acid (see col. 4, lines 54-55 and col. 6, line 22); hydrophobic moisturizing agent, such as glycerol, which is glycerine; alpha-hydroxy acid (see col. 4, line 56); and surfactants.

FOTINOS teaches ceramide is a moisturizing agent that also has anti-radical activity (see col. 6, line 10-12).

MCATEE teaches amphoteric and anionic surfactants in combination with active ingredients, such as peroxide, have been found to be useful for cleansing the skin (see col. 2, line 20-26).

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to incorporate hydrogen peroxide; hydrophilic moisturizing agent, such as hyaluronic acid; hydrophobic moisturizing agent, such as ceramide; and amphoteric surfactant into OZLEN's composition. The person of ordinary skill in the art would have been motivated to make those modifications and reasonably would have expected success because surfactants, hydrophilic and hydrophobic moisturizers are commonly added into creams and lotions intended for the skin; ceramide is a moisturizer that has anti-radical attributes that would be beneficial to the skin; hydrogen

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peroxide would help with skin disorders, such as acne, wherein the alpha-hydroxy acids, such as citric acid and lactic acid, were well-known to be used in anti-acne compositions.

The references do not specifically teach adding the ingredients in the amounts claimed by Applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ and reasonably would expect success. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of Applicant's invention.

Note, the references' composition would be inherently capable of "sufficient to inhibit hydrogen peroxide decomposition" as claimed by Applicant, since the references' composition has the same ingredients as claimed by Applicant.

Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAKE M. VU whose telephone number is (571)272-8148. The examiner can normally be reached on Mon-Tue and Thu-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/
Examiner, Art Unit 1618